Parting Shots by Labor Board Chief

By STEVEN GREENHOUSE

When William B. Gould 4th left his prestigious perch as a professor at the Stanford University Law School four years ago to head the National Labor Relations Board, he was confident that as one of the nation's foremost authorities on labor law, he could restore the board's luster.

But Mr. Gould left Washington last week a bitter figure, frustrated that he had accomplished far less than he hoped and widely accused of having politicized the board and antagonized Congress as well as his fellow board members.

Mr. Gould originally said he hoped he would be remembered for pushing the board back toward the center after its rightward swing in the Reagan-Bush years. But he is more likely to be remembered for warring with Congress.

Mr. Gould, who turned 62 on July 16, insists that many Congressional Republicans have improperly pressured and even bullied his theoretically independent agency. But many Republican lawmakers assert that he invited such meddling by pushing the board leftward and by doing something rare for the chairman of a quasi-judicial agency: speaking out on pending legislation and often clashing with Republican positions.

The labor board, which has five members, plays the highly sensitive role of referee in the nation's labor disputes, blowing the whistle when managers or unions break the rules in organizing drives and contract disputes. Republican Presidents usually appoint board members who tilt toward management, while Democratic Presidents typically name members who lean toward labor.

Mr. Gould's pro-labor tilt has irked many Republicans, and their anger has been stoked further by his outspokenness and his refusal to bend to Congress's demands.

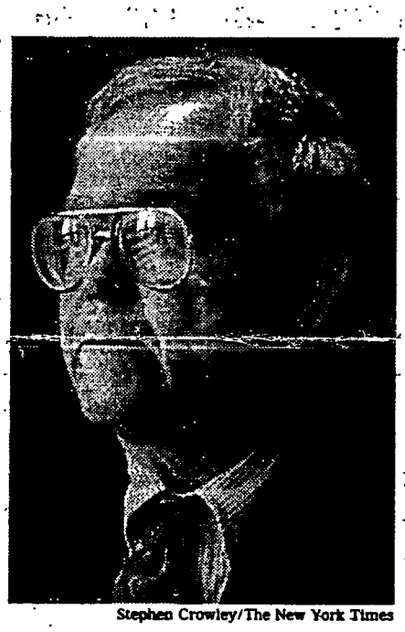
"He is just an unabashedly enthusiastic supporter of the labor movement," said Harris W. Fawell, the Illinois Republican who heads the House Subcommittee on Employer-Employee Relations. "He is just so enthusiastic about it that he has unfortunately avoided neutrality. It's just antithetical to his nature. I'd give him an 'A' for enthusiasm and an 'F' for judicial discretion."

In an interview in his office last week, Mr. Gould suggested that it was Congress that deserved the "F" for discretion, accusing it of "rank interference" with the board's independence. He had an aide pull out a dozen letters in which members of Congress went to bat for their corporate friends, for instance pressuring the board to take one company's settlement offer more seriously.

"If you have a dispute with a neighbor," Mr. Gould said, "and your neighbor has a powerful friend who is a judge and the neighbor is able to lobby the judge who is deciding the case, I think most of us think this smacks of societies that we would call autocratic or authoritarian or third-worldish."

Mr. Gould, who said he was returning to California even though his term did not end until Aug. 27, seemed eager to fire some final rounds in his war with Congress. Point by point, he castigated Congress for meddling in the board's affairs.

House Republicans fought the board's policy of seeking to reduce delays by pursuing emergency injunctions against companies for actions like illegally dismissing pro-union workers. Congress barred the board from adopting a proposed rule that would have sped the unionization of fast-food restaurants. (The rule said a bargaining unit should generally consist of workers at a single restaurant rather than a group of restaurants in a chain.) And Congress cut the board's budget by 2 percent in 1995 and froze its budget for the last two years, forcing the board to reduce its staff and thus increasing delays in processing cases.



Stephen Crowley/The New York Times

A frustrated William B. Gould 4th left Washington last week.

"The House Republicans who are the driving force behind the board's budget cuts want to render us ineffective," Mr. Gould said. "There isn't any doubt that Congress is trying to punish the board because the board stands behind a statute that gives workers the opportunity to help shape their own employment relationship," a reference to the National Labor Relations Act of 1935, which sets rules for collective bargaining.

Mr. Gould, who frequently mentions that one of his great-grandfathers was a slave in the Old South, ridiculed Republicans' assertions that he is a tool of the labor movement. "I'm not in anyone's pocket," he said. "I am my own man, and I march to my own drummer."

Mr. Gould's allies say he was no more pro-labor than past Democratic chairmen, asserting that he was a victim of the heightened partisan sniping that has characterized Washington in recent years.

For their part, Republicans scoff at Mr. Gould when he suggests that he is a neutral umpire. They say he has thrown any pretense of neutrality overboard by endorsing or opposing legislation.

He attacked a Republican-sponsored bill that would let companies set up management-chosen committees of employees that would discuss working conditions. And he opposed the California referendum, voted down in June, that would have barred unions from spending members' dues money on politics without their members' permission.

Some business advocates welcomed Mr. Gould's outspokenness because it made him a lightning rod and fueled Republican efforts to hamstring the board.

"His speaking out gave people who are concerned about the board's agenda an easy handle to criticize the board," said Randel Johnson, vice president for labor policy at the United States Chamber of Commerce. "One might say you can get more done as a bureaucrat by keeping quiet and pursuing your agenda, rather than bragging about what you're doing."

Although even some Democratic allies called Mr. Gould unwise for speaking out on pending legislation, he asserted that "it is my obligation to speak out." He added:

"If I as chairman, with my experience in this arena as a law professor, lawyer and arbitrator, am not competent to speak out, who in the world is? What is the alternative? It's to bow down submissively and allow others to win the day on these critical issues that affect my agency and the National Labor Relations Act, about which I care so deeply."

Mr. Gould is frustrated about another part of his legacy: The board has not issued decisions in many cases where he is eager to leave an imprint. He asserted that several board members wanted to delay issuing decisions until after his term ended in hopes that his position would no longer command a majority. "There are a lot of very big cases pending that we should have dealt with years ago," he said.

Several board members, who insisted on anonymity, asserted that they were not dragging their feet, explaining that they were bogged down with hundreds of cases and that they were focusing on the decisions they thought most important, not necessarily the ones Mr. Gould deemed important. Former board members as well as several labor lawyers said Mr. Gould's forceful personality had alienated board members, often making it hard for him to forge a majority.

Conservatives have repeatedly attacked Mr. Gould for having delayed long-awaited decisions that would spell out the rights of union members not to have their dues spent on politics. But Mr. Gould insisted that other members were responsible.

"Some board members simply will not act on certain cases," he said. "I'm concerned because of my legacy. Indolence and indecision are being used to thwart the issuance of leading cases, which include my policy ideas."

Labor Board Makes Union Membership Easier for Temps

By STEVEN GREENHOUSE

For years it was nearly impossible for temporary workers to join unions, but the National Labor Relations Board issued a ruling yesterday that opened the door for many temps to join unions at their workplaces.

The Washington-based labor board, in a 3-to-1 decision that took effect immediately, authorized temporary workers at a business to join the same union as the company's permanent workers without first obtaining permission from the employment agency that assigned the temps to the business.

In its previous rulings, the board stated that temporary workers sent by an employment agency to a company could vote to join a union at the company only if the employment agency agreed. Temporary help agencies rarely gave the workers they sent to a company the go-ahead to join a union at the company.

Officials with the A.F.L.-C.I.O. hailed the ruling, saying it would help improve wages, benefits and working conditions for many of the 1.2 million people employed by temporary agencies — one of the fastest growing segments of the American work force.

But many business groups criticized the ruling, insisting that it would raise production costs for many employers and might force companies to pay their temporary workers more than they had agreed to in their contract with temporary staffing agencies.

The labor board ruled that in many cases temporary workers are in effect the employees of the user company and not of the agency and that, because of their similar circumstances, they should be treated as part of the same bargaining unit as the user company's permanent employees.

The labor board wrote, "A growing number of employees who are part of what is commonly described as the 'contingent work force' are being effectively denied representational rights guaranteed them under the National Labor Relations Act."

Companies that use temporary workers to save money could lose those savings.

Under the decision, labor unions might simply petition the labor board to rule that several dozen temporary employees at a unionized work site should be added to the union bargaining unit, even without a vote by the temporary workers.

At a time when the union movement is straining to add workers, the decision was important for labor because the number of people working for temporary help agencies soared more than sixfold from 1982 to 1998, while jobs over all grew by 41 percent.

John J. Sweeney, the A.F.L.-C.I.O.'s president, said the ruling "is an important step in addressing the rights of contingent work force employees, who have too often been relegated to second-class status and rights, if any."

Charles Craver, a labor relations expert at George Washington University, said, "For unionized firms that have been bringing in temporary workers to save money, that benefit may be lost because all of a sudden those temp workers may have to be in the same bargaining unit as the permanent workers. As a result, there will be less incentive to use outside workers."

David Miller, a lawyer for one of the companies that lost the case, the Jeffboat Division of the American Commercial Marine Service Company, said, "This could be a devastating decision. It means that these employees could be covered by the wages and benefits in a union contract when neither the user company or the temp agency had considered that."

The New York Times

Edward Keating/The New York Times

Workers at the Smithfield Packing Company in Tar Heel, N.C. A judge ruled that 11 had been illegally fired in a labor organizing campaign.

Judge Finds Labor Law Broken at Meat-Packing Plant

By KEVIN SACK

ATLANTA, Jan. 3 — Managers at the world's largest pork processing plant, the Smithfield Packing Company's slaughterhouse in Tar Heel, N.C., committed "egregious and pervasive" labor law violations during two unionizing campaigns in the 1990's, an administrative law judge has ruled.

The judge, John H. West, also ordered the company to adopt numerous policies giving the United Food and Commercial Workers a fair shot in its next election.

Judge West's sweeping opinion, which runs 436 pages and was issued on Dec. 15, finds that 11 Smithfield workers were illegally fired because of their union sympathies and must be rehired with back pay. The judge concluded that other workers had been threatened and improperly interrogated about their union activities, that the company had warned of layoffs and a possible plant closure if the unionization campaign succeeded and that one pro-union employee had been assaulted in retaliation for his organizing efforts.

Workers at the Smithfield plant were so intimidated by management, Judge West ruled, that any future election should be held outside the plant and possibly even outside the county because of the company's influence in the area.

Judge West, working for the National Labor Relations Board, set aside the results of the most recent election, in 1997, which the company won with 63 percent of the vote. He also wrote that several of the company's lawyers and managers had lied under oath in hearings on the case. He raised the possibility that one lawyer had suborned perjury and that another had knowingly introduced false statements at the hearing.

The case is far from over. A spokesman for Smithfield Foods of Smithfield, Va., the parent of the packing company, said today that it would appeal the judge's findings to the full National Labor Relations Board, and that if it failed there, the company would appeal to the federal courts.

The United States Court of Appeals for the Fourth Circuit, a generally conservative bench that hears labor law cases originating in North Carolina, has sometimes reversed pro-union findings by the board.

The appeals process could take years, lawyers on both sides agree. The company, which had sales in 2000 of $5.2 billion, does not plan to rehire any of the workers until a final ruling is issued, said Jerry Hostetter, the vice president for corporate communications of Smithfield Foods.

Despite the possible delay, union officials greeted the ruling jubilantly and said it would give them a significant lift in their effort to unionize the North Carolina plant. Because the plant is the world's largest, with more than 5,000 employees, the lack of a union there has depressed wages across the pork-processing industry, said Greg A. Denier, director of communications for the union.

Mr. Denier said he hoped the ruling would buffer Smithfield workers from the company's pervasive influence in Tar Heel and Bladen County. "Smithfield has such power in the community that there is tremendous pressure that they put upon workers," he said.

Among the judge's findings was that company officials had sought to scare the plant's sizable Hispanic work force by warning that the union, if successful in organizing the plant, would report workers to the Immigration and Naturalization Service. The New York Times found last year that labor at the plant was largely stratified by race among white workers, black workers and Hispanic workers and that racial tensions emerged regularly.

North Carolina, with its laws against compulsory unionization, is a difficult place to unionize. But the union may have some reason for hope.

In 1999, the Union of Needletrades, Industrial and Textile Employees won a unionization vote at a Fieldcrest Cannon plant in Kannapolis, N.C., that had beaten back organizing efforts for 25 years. That vote also came after the National Labor Relations Board had repeatedly penalized the company, though the union's success was attributed more to a change in corporate ownership, the demands of modern production lines and the growing presence of union-friendly immigrants in the work force.

In lengthy detail, a ruling that a company thwarted efforts to unionize.

Mr. Hostetter, the Smithfield spokesman, said the company had "a history of very decent labor relations." And he said the judge's finding that 11 workers were improperly fired should be viewed in a larger context.

"The union is protesting the discharge of 11 people out of 16,000 from 1993 through 1997, the majority of whom quit or were terminated as a result of attendance-related rule violations," Mr. Hostetter said in a statement. "In Smithfield's opinion, the extremely large number of employees who have left work at Smithfield without complaining or filing any lawsuit speaks much more loudly than the U.F.C.W.'s protest of 11 allegedly union-related discharges."

Mr. Hostetter declined to address the judge's accusations against the lawyers, who work for the firm of Maupin, Taylor & Ellis in Raleigh, N.C. But the firm's managing partner, Robert Valois, said, "I can assure you that our lawyers did not suborn perjury," the legal term for inducing another person to lie under oath.

Judge West's report is replete with details about how Smithfield fired workers who, he concluded, would not have been dismissed were it not for their union activities. In case after case, he heard testimony from the workers and from company officials and then found that the managers lacked credibility.

He aimed particular criticism at the plant's general manager, Jere Null, who he said was "not a credible witness." The judge concluded that Mr. Null was responsible for positioning 8 to 10 county sheriff's deputies in the plant parking lot on the day of the 1997 election as an intimidation tactic, and he dismissed Mr. Null's claim that he did not know in advance about their presence.

"Null not only knew that they were there, Null was responsible for them being there," Judge West wrote. "Null wanted to make a point that the Tar Heel plant was his plant, the union was going to pay a price for its attempt to organize the employees who worked there, and employees who supported the union would have an old-fashioned example of what can occur when they try to bring in a union."

The New York Times

Report Faults Laws for Slowing Growth of Unions

By STEVEN GREENHOUSE

MIAMI — Marie Sylvain, a longtime nursing home worker, was so upset about her low wages and workload — feeding, washing, dressing and changing linens for 14 patients each shift — that she decided to lead a unionization drive.

But her employer soon fired her, and the organizing drive quickly fizzled as her 70 co-workers feared that they would also be dismissed if they pushed for a union.

That was four and a half years ago. Today, Ms. Sylvain voices intense frustration that, because of extended legal appeals, she has still not been reinstated even though a judge ruled nearly three years ago that her firing violated the National Labor Relations Act, which prohibits employers from firing or penalizing workers for supporting a union.

Ms. Sylvain's dismissal made her one of thousands of workers who are fired, demoted or otherwise punished each year for backing a union. A recent study of National Labor Relations Board data showed that from 1992 to 1997, employers fired or punished more than 125,000 workers for supporting a union.

Numerous academic studies showed that it frequently took three to five years for fired workers to be reinstated, delays that union leaders said often caused organizing drives to die at a time when the labor movement was seeking to add hundreds of thousands of members and reverse its decades-long decline.

"U.S. labor law is stacked against employees who wish to organize a union, allowing employers to intimidate and coerce workers not to unionize," said John J. Sweeney, president of the A.F.L.-C.I.O.

But some experts said unions were having trouble attracting members, not because of firings and delays by the labor board, but because of economic changes, especially the shift from manufacturing to services.

"Job growth is coming where unions are historically weak," said Leo Troy, a labor economist at Rutgers University. "The economy is leaving unions behind. Employer behavior is virtually irrelevant to labor's decline. Employer behavior is an easy scapegoat."

The concern about obstacles to organizing is one reason labor is supporting Vice President Al Gore in the presidential race despite differences with him over trade. In numerous appearances at union conventions, Mr. Gore has vowed to push for changes that would make it easier for unions to organize.

"Vice President Gore has been the most outspoken champion of the freedom to join a union since Franklin Delano Roosevelt," Mr. Sweeney said.

A recent report by Human Rights Watch concluded that because of systematic violations by employers and long delays in obtaining legal redress, the United States was essentially violating international agreements guaranteeing the rights of workers to form unions.

"Most people view these issues as just a labor-management dispute," said Lance Compa, a Cornell University labor relations professor who wrote the Human Rights Watch report, "but we think the focus should be that there is a right of freedom of association recognized under international law, and that right is being widely denied in the United States."

In the 1950's, several hundred workers suffered reprisals each year for backing a union, according to National Labor Relations Board data. But Charles Morris, a professor emeritus at Southern Methodist University, said that by the late 1990's, employers carried out reprisals against more than 20,000 union supporters each year. He also found that 1 out of 18 workers involved in unionization drives faced some type of punishment for supporting the union.

Ms. Sylvain said her firing frightened other workers from backing a union at Palm Gardens nursing home.

"They say, 'Look what happened to Marie,' " said Ms. Sylvain, who said she was paid $6.50 an hour at the nursing home and needed food stamps and Medicaid to support herself and two children. "The law gives you something with one hand, and then it takes it away with the other."

But business groups argued that after eight years under President Clinton, the nation's enforcement was stacked against management, not unions.

"Back in the 1950's, unions were fat and happy and represented 35 percent of the labor force," said Randy Johnson, vice president for labor policy at the United States Chamber of Commerce.

"Now that they represent just 9 percent of private-sector workers," Mr. Johnson said, "they're blaming the law for their problems. They're trying to create a straw man instead of looking at the more logical explanation that the message unions have for workers isn't selling."

Many labor experts said the penalties that employers faced for firing union supporters were so modest that it made economic sense for companies to flout the law.

When the National Labor Relations Board ruled that Ernest Duval and six other fired workers should be reinstated five years after a nursing home in Palm Beach, Fla., fired them for leading a unionization drive, the labor board concluded that he was owed $1,800 in back pay. The award was modest because federal law requires employers to pay the wages workers missed after their dismissal, minus whatever they earned in other jobs they took after being fired.

The Human Rights Watch report said: "An employer determined to get rid of a union activist knows that all that awaits, after years of litigation if the employer persists in appeals, is a reinstatement order the worker is likely to decline and a modest back-pay award. For many employers, it is a small price to pay to destroy a workers' organizing effort by firing its leaders."

Mr. Compa said: "Firing is the single most potent anti-union weapon. The upshot is many employers can achieve their goal of remaining union-free by breaking the law."

Vice President Gore has yet to spell out how he would change labor laws to make it easier to form unions. Also looking for ways to discourage illegal firings, Ralph Nader, the Green Party presidential candidate, has proposed that improperly fired union supporters receive punitive damages and lawyers' fees. Gov. George W. Bush, who has long clashed with unions, has not called for making it easier for workers to unionize.

Labor leaders said that as long as the Republicans controlled Congress, it would be difficult to enact laws making it easier to form unions. But, these leaders said, some steps could be taken under existing law, among them having the labor board's lawyers seek more injunctions that would quickly reinstate wrongly fired workers. That would allow the terminated employee to remain on the job during appeals.

Ms. Sylvain said she wished a court could have ordered her back to work while her case was appealed. In January 1998, 21 months after she was fired, an administrative law judge ruled that the nursing home had fired her illegally and that she should be reinstated. The judge found that the nursing home had concocted a story for firing by saying she took time off without filling out the required vacation forms.

In March 1999, the National Labor Relations Board in Washington affirmed that decision, but the nursing home appealed. On Oct. 5, a federal appeals court affirmed the labor board and ruled that Ms. Sylvain should be reinstated.

She is still not back on the job because the labor board has yet to negotiate her reinstatement with her the nursing home.

Andrew Itkoff for The New York Times

Although a judge ruled in 1998 that Marie Sylvain was fired for trying to organize a Miami nursing home, she is still waiting to return to work.

Concluding that America ignores international law.